IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/04/2004

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THE HONOURABLE MR.JUSTICE C.NAGAPPAN

WRIT PETITION No.19223 OF 1997

Kadambur Primary Agricultural
Co-operative Bank Limited,
Rep.by its President K.Chandran ... Petitioners

-Vs-

1. The Presiding Officer,
Labour Court, Salem.

2. K.Mohan ... Respondent

Writ Petition under Article 226 of the Constitution of India
praying for issuance of writ of certiorari as stated therein.

!For Petitioner .. Mr.D.Sivakumaran

^For Respondents .. Mrs.V.Vaijayanthimala for R-2
Labour Court R-2.

:ORDER

The petitioner has sought for issuance of writ of certiorari to quash the Award, dated 27.03.1997, passed in I.D.No.52 of 1996 by the first respondent Labour Court.

2. The second respondent was employed as a Peon in the petitioner Bank from 11.3.1981 and subsequently was appointed as a Salesman from 01.01.1983 and on 16.11.1988, deficit in the stock of fertilizers bags, which were under the care of the second respondent, was found out and a charge memo was issued. The second respondent denied the charges, pursuant to which a domestic enquiry was held and the enquiry officer found the second respondent guilty of the charges of misappropriation and thereafter the second respondent was terminated from service on 12.10.1992.

3. The second respondent raised an industrial dispute in I.D.No.52 of 1996 on the file of first respondent Labour Court and sought for reinstatement. The Labour Court in the preliminary issue found that the domestic enquiry was not fair and proper and called upon the management to adduce evidence before it to prove the charges. No evidence was let in and the first respondent Labour Court by Award, dated 27 .03.1997, directed

reinstatement of the second respondent with backwages. Challenging the award as illegal, the management has filed the writ petition and has sought for quashing it.

4. Heard the learned counsel for the petitioner as well as the second respondent.

5. Three charges were framed against the second respondent and in the domestic enquiry, the second respondent did not fully participate and the enquiry officer found the charges proved. Accepting the report of the enquiry officer, the petitioner management terminated the services of the second respondent and he raised an industrial dispute before the first respondent. The Labour Court found that the domestic enquiry was not fairly and properly conducted and asked the management to show by fresh evidence that the termination order was proper. The management only filed 13 documents pertaining to the domestic enquiry and endorsed in writing that it has no oral

evidence. The first respondent Labour Court held that the management has not justified its action by leading fresh evidence and hence the second respondent is entitled for reinstatement.

6. The learned counsel for the petitioner contended that the management is under no obligation to lead further evidence, since it is of the view that the charges, on the basis of the evidence already led before the enquiry officer, stood proved. Per contra, the learned counsel for the second respondent contended that the record pertaining to the domestic enquiry would not constitute fresh evidence as those proceedings have already been found to be defective and the petitioner management has not let in any fresh evidence to prove the charges and hence rightly reinstatement was ordered.

7. It is well settled law that where enquiry has been found to be defective, the Labour Court can call upon the management to let in evidence before it to justify the termination order and if such evidence has not been led, the management has to suffer the consequences. In this context, it is relevant to quote the decision of the Apex Court in Neeta Kaplish vs. Presiding Officer, labour Court and another, reported in [(1999)1 SCC 517), in which their Lordships have laid down as follows.

"24. In view of the above, the legal position as emerges out is that in all cases where enquiry has not been held or the enquiry has been found to be defective, the Tribunal can call upon the management or the employer to justify the action taken against the workman and to show by fresh evidence that the termination or dismissal order was proper. If the management does not lead any evidence by availing of this opportunity, it cannot raise any grouse at any subsequent stage that it should have been given that opportunity, as the Tribunal, in those circumstances, would be justified in passing an award in favour of the workman. If, however, the opportunity is availed of and the evidence is adduced by the management, the validity of the action taken by it has to be scrutinised and adjudicated upon on the basis of such fresh evidence.

25. .....

26. .....

27. The record pertaining to the domestic enquiry would not

constitute "fresh evidence" as those proceedings have already been found by the Labour Court to be defective. Such record would also not constitute "material on record", as contended by the counsel for the respondent, within the meaning of Section 11-A as the enquiry proceedings on being found to be bad, have to be ignored altogether. The proceedings of the domestic enquiry could be, and were in fact, relied upon by the Management for the limited purpose of showing at the preliminary stage that the action taken against the appellant was just and proper and that a full opportunity of hearing was given to her in consonance with the principles of natural justice. This contention has not been accepted by the Labour Court and the enquiry has been held to be bad. In view of the nature of objections raised by the appellant, the record of enquiry held by the Management ceased to be "material on record" within the meaning of Section 11-A of the Act and the only course open to the Management was to justify its action by leading fresh evidence as required by the Labour Court. If such evidence has not been led, the Management has to suffer the consequences.
28. .... Since the Management did not lead any fresh evidence on merits, the appellant was well within her right to say that she too would not lead any fresh evidence. But for that reason, hr claim could not be rejected. Rather, she was entitled to be granted relief then and there. ..."

7. The petitioner management did not lead any fresh evidence on merits before the first respondent Labour Court and the documents numbering 13 marked by it, which pertains to the domestic enquiry, would not constitute fresh evidence. In those circumstances, the petitioner has to suffer the consequences and the second respondent is entitled to the relief of reinstatement with backwages. The impugned award does not call for any interference.

8. The writ petition is dismissed. No costs.

Index: yes
Internet: yes

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To:

The Presiding Officer,
Labour Court,
Salem.

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